

REMARKS/ARGUMENTS

This Amendment is in response to the Official Action mailed on December 23, 2008. The shortened period of time for responding is set to expire on March 23, 2009. A Request for Continued Examination is submitted herewith.

Claims 11 and 20 have been amended, and new claims 46-48 have been added. These claims are supported by the originally filed application and add no new matter. (See, e.g., FIG. 1.) Claims 4, 8-10, 12-13, and 41 were previously canceled. Accordingly, claims 1-3, 5-7, 11, 14-40, and 42-48 are currently pending in the application for review by the Examiner in light of the within remarks.

I. INTERVIEW SUMMARY

Initially, Applicants would like to thank Examiner Swiger for extending the courtesy of a telephonic interview with Applicants' attorney, April M. Capati. During the interview, Ms. Capati and the Examiner discussed U.S. Patent No. 5,749,876 to Duvillier ("*Duvillier*"), the distinguishing features of the claimed embodiments, and possible claim amendments that would place certain of the claims in condition for allowance.

The Examiner suggested that the arguments be put in writing. Additionally, the Examiner invited Applicants to contact the Examiner in early April to further discuss the case and move it toward allowance.

II. CLAIM REJECTIONS — 35 U.S.C. § 102

Claims 1-3, 5-6, 11, 14-37, 39-40, 42, and 44 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Duvillier*. Applicants respectfully submit that in view of the amendments and arguments made herein, the rejections are overcome.

A. Duvillier Fails To Teach The Claimed Hole Guide

Independent claim 1 recites a "hole guide containing a plurality of holes arranged in a hole pattern . . . the hole pattern allowing for holes to be made" Independent claim 5 recites a "hole guide insert . . . containing a plurality of holes . . . the hole pattern allowing for holes to be made" Claim 27 recites "a pattern guide . . . allowing for holes to be made along first and second spaced apart portions of the perimeter of the bone graft." Claim 42 recites a "means for forming a pattern of bores in said bone graft." Finally, claim 43 recites "a hole guide insert containing a plurality of holes . . . forming a hole pattern . . . , the hole pattern allowing for holes to be made along first and second spaced apart portions of the perimeter of the bone graft."

Duvillier fails to teach these aforementioned limitations. In the Office Action, it is asserted that *Duvillier* includes an "insertable hole guide 46 containing a plurality of linear holes 49." However, as discussed in more detail below, it is respectfully submitted that the alleged "hole guide" 46 is nothing more than a plate for receiving a pin.

As shown below from FIG. 2 of *Duvillier*, there is a means 42 that takes into consideration the angle existing between the anatomical axis 8 of the femur, which coincides with that of the rod 28 when it is introduced therein, and the mechanical axis 1. (*Duvillier* col.6 ll. 57-60.)

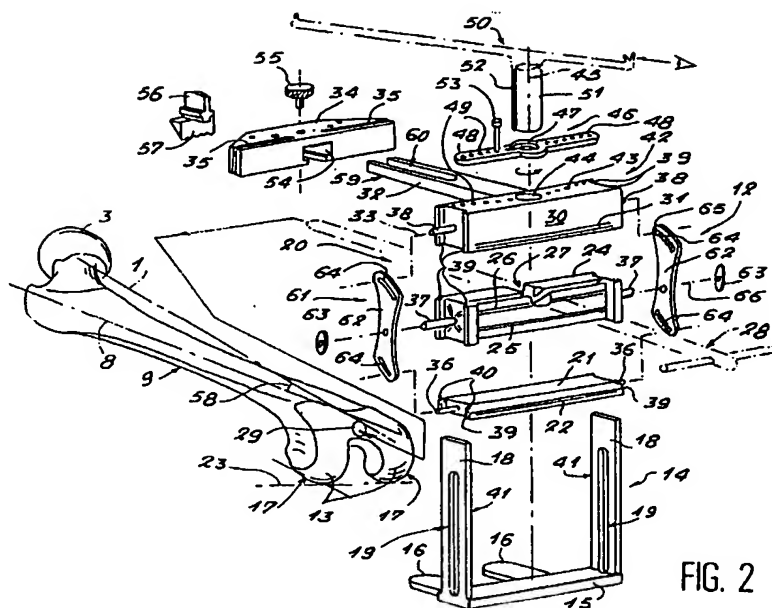


FIG. 2

The means 42 provides for angular adjustment of the position of the resection device 12 in relation to the rod 28. (*Id.* col.6 ll.60-62.) The means 42 includes the plate 46 (classified in the Office Action as the hole guide), which is designed to rest on the upper face of the block 30. (*Id.* col.7 ll.4-11.)

A small pin is designed to be introduced into the small bores 48 and 49 so as to permit the blocks to be positioned, and in particular the distal cutting block 34 integral with the block 30, in such a way that the distal cut is perpendicular to the mechanical axis 1 defined by virtue of the sighting system 50. (*Id.* col.7 ll. 19-24.) As more fully explained in the *Duvillier* specification, the blade guide is oriented in the sagittal plane by adjusting it in order to take account of the angle existing between the mechanical axis 1 of the lower limb and the anatomical axis 8 of the femur, by virtue of the adjustment of the means 42. (*Id.* col.12 ll.44-50.) The small

pin 43 is introduced into the bores 48 and 49, corresponding to the angle observed by the sighting means 50. (*Id.*)

Thus, the plate 46 of *Duvillier* does not provide a pattern that allows for holes to be made on the bone, as suggested in the Office Action. As discussed above, the plate 46 is a part of the means 42, which operates to assist with the angular adjustment of the blocks 21, 24, and 30 for purposes of resecting the bone at an appropriate angle. Applicants respectfully submit that there is simply no discussion in *Duvillier* whatsoever that the plate 46 is a hole guide enabling one to make holes on the bone. Accordingly, it is respectfully submitted that the rejection of these claims is overcome.

B. Duvillier Fails To Teach The Limitations Of Claims 5 And 46

Claim 5 recites that the hole guide insert and the cutting guide insert are "interchangeable." Applicants respectfully submit that *Duvillier* fails to teach this limitation for at least the reasons set forth below.

First, as set forth in Part II.A. above, *Duvillier* fails to teach a hole guide and hole guide insert.

Second, even assuming that *Duvillier* teaches a hole guide, which Applicants contend it does not, the apparatus of *Duvillier* does not teach that the hole guide insert and cutting guide insert are "interchangeable." Interchange is defined as "to put each of (two things) in place of the other . . . to change places mutually" See *Merriam-Webster's Collegiate Dictionary* (11th ed.) (attached hereto as Exh. A). Similarly, "interchangeable" is defined as "capable of being interchanged . . . permitting mutual substitution." (*Id.*) The alleged hole guide 46 of *Duvillier* is the plate 46 attached to the cutting guide 30. As discussed above, the plate 46 is

attached via a pin 53 to the cutting block 30 and provides for angular adjustment of the block 30, as well as blocks 21 and 24. In use, the *Duvillier* plate 46 and cutting guide 30 must be used in combination with one another. Indeed, *Duvillier* is silent as to the plate 46 being used independently of the cutting guide 30. Thus, the plate 46 and cutting guide 30 cannot be used in place of the other and do not change places mutually. Thus, *Duvillier* is silent as to these parts being interchangeable.

Similarly, claim 46 recites "wherein only the hole guide insert or only the cutting guide insert can be associated with the main body at one time." For the same reasons set forth above, *Duvillier* also fails to teach this limitation.

Accordingly, for at least the foregoing reasons, Applicants respectfully submit that the rejections of claims 5 and 46 are overcome.

C. Duvillier Fails To Teach The Limitations Of Claim 11

Claim 11 has been amended to recite that the first member and a second member each have ends, and that the first and second members are "pivotally connected to one another at their respective ends" and "capable of holding said bone graft material therebetween."

In contrast, as shown in FIG. 2 reproduced from *Duvillier* above, *Duvillier* teaches that each of the blocks have posts 36,37,38 extending into the means 61 (comprised of the two lateral flanges 62) that rotate about the pins 37. (Col.7 11.43-52.) By pivoting the flanges forward or backward, the blocks 36, 37, 38 become displaced vertically. (Col.7 11.61-63.) *Duvillier* is therefore silent as to any of the blocks 21, 24, and 30 being connected to one another at their respective ends and capable of holding the bone graft material

therebetween. Thus, *Duvillier* clearly fails to meet this limitation of claim 11.

Accordingly, Applicants respectfully submit that the rejection of claim 11 is overcome, and that claim 11 is in condition for allowance.

D. Duvillier Fails To Teach The Limitations Of Claim 20

Claim 20 recites that the first and second portions of the body are "hinged together." For the same reasons set forth in Part II.C. above, Applicants respectfully submit that *Duvillier* fails to teach that the blocks 21, 24, and 30 are hinged together. Accordingly, Applicants respectfully submit that for at least these reasons, claim 20 is therefore in condition for allowance.

III. CLAIM REJECTIONS — 35 U.S.C. § 103

The Examiner has rejected claim 38 under 35 U.S.C. § 103(a) as being obvious in view of *Duvillier*. As set forth above, *Duvillier* fails to teach all of the limitations of the base claim. Accordingly, Applicants respectfully submit that the 35 U.S.C. § 103(a) rejection is improper. Thus, Applicants respectfully request allowance of claim 38.

IV. CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at

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(908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 23, 2009

Respectfully submitted,

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EXHIBIT A

Merriam-Webster's Collegiate Dictionary

ELEVENTH EDITION



Merriam-Webster, Incorporated
Springfield, Massachusetts, U.S.A.



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Library of Congress Cataloging in Publication Data

Merriam-Webster's collegiate dictionary. — Eleventh ed.

p. cm.

Includes index.

ISBN 0-87779-807-9 (Laminated unindexed : alk. paper). — ISBN 0-87779-808-7 (Jacketed hardcover unindexed : alk. paper). — ISBN 0-87779-809-5 (Jacketed hardcover with CD-ROM : alk. paper). — ISBN 0-87779-810-9 (Leatherlook with CD-ROM : alk. paper). — 0-87779-813-3 (Canadian). — 0-87779-814-1 (international).

1. English language—Dictionaries. I. Title: Collegiate dictionary. II. Merriam-Webster, Inc.

PE1628.M36 2003

423—dc21

2003003674

CIP

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in-ter-cep-tion \in-tər-'sep-shən\ *n* (15c) 1 a: the action of intercepting b: the state of being intercepted 2: something that is intercepted; esp: an intercepted forward pass
in-ter-cept-or also **in-ter-cept-er** \in-tər-'sep-tər\ *n* (1598) one that intercepts; specif: a light high-speed fast-climbing fighter plane or missile designed for defense against raiding bombers or missiles
in-ter-ces-sion \in-tər-'se-shən\ *n* [ME, fr. MF or L; MF, fr. L *intercessio*, *intercessio*, fr. *intercedere*] (15c) 1: the act of interceding 2: prayer, petition, or entreaty in favor of another — **in-ter-ces-sion-al** \-'se-sh-nəl, -'se-sh-nəl\ *adj* — **in-ter-ces-sor** \-'se-sər\ *n* — **in-ter-ces-so-ry** \-'se-s-ē, -'se-s-ē\ *adj*
in-ter-change \in-tər-'chānj\ *vb* [ME *entrechaungen*, fr. AF **entrechanger*, fr. *entre-* + *changer* to change] *vt* (14c) 1: to put each of (two things) in the place of the other 2: EXCHANGE ~ *vi*: to change places mutually — **in-ter-change-er** *n*
in-ter-change \in-tər-'chānj\ *n* (15c) 1: the act, process, or an instance of interchanging; EXCHANGE 2: a junction of two or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams
in-ter-change-able \in-tər-'chānj-ə-bəl\ *adj* (14c) capable of being interchanged; esp: permitting mutual substitution (~ parts) — **in-ter-change-abil-ity** \in-tər-'chānj-ə-bi-l-i-tē\ *n* — **in-ter-change-able-ness** \in-tər-'chānj-ə-bi-l-i-tē\ *n* — **in-ter-change-ably** \-bəl\ *adv*
in-ter-col-le-giate \in-tər-'kɒl-'lē-jət, -jət\ *adj* (ca. 1874) existing, carried on, or participating in activities between colleges (~ athletics)
in-ter-co-lum-ni-a-tion \in-tər-'kɒl-'m-ni-'ā-shən\ *n* [L *intercolumnium* space between two columns, fr. *inter-* + *columna* column] (1624) 1: the clear space between the columns of a series 2: the system of spacing of the columns of a colonnade
in-ter-com \in-tər-'kām\ *n* [short for *intercommunication system*] (1940) a two-way communication system with a microphone and loudspeaker at each station for localized use
in-ter-com-mu-ni-ca-tion \in-tər-'kɒm-'myū-nə-'kāt\ *vt* (1586) 1: to exchange communication with one another 2: to afford passage from one to another — **in-ter-com-mu-ni-ca-tion** \-kāt\ *n* — **in-ter-com-mu-ni-ca-tion** \-kāt\ *n* (1911) INTERCOM
in-ter-com-mu-ni-ca-tion \in-tər-'kɒm-'myū-nən\ *n* (1921) interdenominational participation in communion
in-ter-con-nect \in-tər-'kɒn-'nekt\ *vt* (1865) to connect with one another ~ *vi*: to be or become mutually connected — **in-ter-con-nect-ion** \-'nekt-shən\ *n* — **in-ter-con-nect-iv-ity** \-'kɒn-'nekt-'i-v-i-tē, -'kɒn-'nekt-'i-v-i-tē\ *n* (1865) 1: mutually joined or related (~ highways) (~ political issues) 2: having internal connections between the parts or elements — **in-ter-con-nect-ed-ness** *n*
in-ter-con-ti-nen-tal \in-tər-'kən-'tən-'təl\ *adj* (ca. 1855) 1: extending among continents or carried on between continents 2: capable of traveling between continents (~ ballistic missile)
in-ter-con-ver-sion \in-tər-'kɒn-'vər-zhən, -shən\ *n* (1865) mutual conversion (~ of chemical compounds) — **in-ter-con-vert** \-'vɜrt\ *vt* — **in-ter-con-vert-ibil-ity** \-'vɜrt-ə-bi-l-i-tē\ *n* — **in-ter-con-vert-ible** \-'vɜrt-ə-bəl\ *adj*
in-ter-cool-er \in-tər-'kū-lər\ *n* (1899) a device for cooling a fluid (as air) between successive heat-generating processes
in-ter-cos-tal \in-tər-'kɒs-təl\ *adj* [NL *intercostalis*, fr. L *inter-* + *costa* rib — more at COAST] (1597) situated or extending between the ribs (~ spaces) (~ muscles) — **intercostal** *n*
in-ter-course \in-tər-'kɔrs\ *n* [ME *intercourse*, prob. fr. MF *entrecours*, fr. ML *intercursus*, fr. L, act of running between, fr. *intercurrere* to run between, fr. *inter-* + *curre* to run — more at CAR] (15c) 1: connection or dealings between persons or groups 2: exchange esp. of thoughts or feelings; COMMUNION 3: physical sexual contact between individuals that involves the genitalia of at least one person (anal ~) (oral ~); esp: SEXUAL INTERCOURSE 1 (heterosexual ~)
in-ter-crop \in-tər-'krɒp, -'krɒp\ *vt* (1898) to grow a crop in between (another) ~ *vi*: to grow two or more crops simultaneously (as in alternate rows) on the same plot — **in-ter-crop** \in-tər-'krɒp\ *n*
in-ter-cross \in-tər-'krɒs\ *vt* (1711) CROSS ~ *vi*: INTERBREED, HYBRIDIZE
in-ter-cross \in-tər-'krɒs\ *n* (1859) an instance or a product of crossbreeding
in-ter-cur-rent \in-tər-'kər-ənt, -'kər-ənt\ *adj* [L *intercurrent*, *intercurrents*, pp. of *intercurrere*] (1611) occurring during and modifying the course of another disease (an ~ infection)
in-ter-cut \in-tər-'kʌt\ *vt* (1932) 1: to insert (a contrasting camera shot) into a take by cutting 2: to insert a contrasting camera shot into (a take) by cutting ~ *vi*: to alternate contrasting camera shots by cutting
in-ter-den-tal \in-tər-'den-təl\ *adj* (ca. 1874) 1: situated or intended for use between the teeth 2: formed with the tip of the tongue between the upper and lower front teeth — **in-ter-den-tal-ly** \-təl\ *adv*
in-ter-dict \in-tər-'dikt\ *n* [ME, alter. of *entredite*, fr. AF, fr. L *interdictum* prohibition, fr. neut. of *interdictus*, pp. of *interdicere* to interpose, forbid, fr. *inter-* + *dicere* to say — more at DICTION] (15c) 1: a Roman Catholic ecclesiastical censure withdrawing most sacraments and Christian burial from a person or district 2: a prohibitory decree
in-ter-dict \in-tər-'dikt\ *vt* (15c) 1: to lay under or prohibit by an interdict 2: to forbid in a usu. formal or authoritative manner 3 a: to destroy, damage, or cut off (as an enemy line of supply) by firepower to stop or hamper an enemy b: INTERCEPT 2a (~ drug shipments) syn see FORBID — **in-ter-dic-tion** \-'dikt-shən\ *n* — **in-ter-dic-tive** \-'dikt-iv\ *adj* — **in-ter-dic-tor** \-tər\ *n* — **in-ter-dic-to-ry** \-t(ə)-rē\ *adj*
in-ter-dif-fu-sion \-di-'fyū-zhən\ *n* (ca. 1872) the process of diffusing and mixing freely so as to approach a homogeneous mixture — **in-ter-dif-fuse** \-'fyūz\ *vi*
in-ter-dig-i-tate \-di-'jə-'tāt\ *vi* -tāt-ed; -tāt-ing [inter- + L *digitus* finger — more at TOE] (ca. 1849) to become interlocked like the fingers of folded hands — **in-ter-dig-i-ta-tion** \-tāt-shən\ *n*
in-ter-dis-ci-plin-ary \-di-'sɪ-plə-'ner-ē\ *adj* (1926) involving two or more academic, scientific, or artistic disciplines — **in-ter-dis-ci-plin-ar-ly** \-di-'sɪ-plə-'ner-ē\ *adv*
in-ter-est \in-tər-'est; -'trest; -'trest\ *n* [ME, prob. alter. of earlier *interesse*, fr. AF & ML; AF, fr. ML, fr. L, to be between, make a difference, concern, fr. *inter-* + *esse* to be — more at IS] (15c) 1 a (1)

right, title, or legal share in something (2) participation in advantage and responsibility b: BUSINESS, COMPANY 2 a: a charge for borrowed money generally a percentage of the amount borrowed 1: the profit in goods or money that is made on invested capital c: a excess above what is due or expected (returned the insults with ~) ADVANTAGE, BENEFIT; also: SELF-INTEREST 4: SPECIAL INTEREST 5 a: a feeling that accompanies or causes special attention to an object or class of objects; CONCERN b: something that arouses such attention c: a quality in a thing arousing interest
in-ter-est *vt* (1608) 1: to induce or persuade to participate or engage 2: to engage the attention or arouse the interest of
in-ter-est-ed \in-t(ə)-'res-təd; -'res-, -'res-, -'res-\ *adj* (1608) 1: having the attention engaged (~ listeners) 2: being affected (~ involved) (~ parties) — **in-ter-est-ed-ly** *adv*
in-ter-est-group *n* (1908) a group of persons having a common identifying interest that often provides a basis for action
in-ter-est-ing \in-t(ə)-'res-tɪŋ; -'res-, -'res-, -'res-\ *adj* (1761) holding the attention: arousing interest — **in-ter-est-ing-ness** *n* — **in-ter-est-ing-ly** \-lɪ\ *adv* (1811) 1: in an interesting manner 2: as matter of interest
in-ter-face \in-tər-'fās\ *n* (1882) 1: a surface forming a common boundary of two bodies, spaces, or phases (an oil-water ~) 2 a: the place at which independent and often unrelated systems meet and act on or communicate with each other (the man-machine ~) b: the means by which interaction or communication is achieved at an interface — **in-ter-fa-cial** \in-tər-'fā-shəl\ *adj*
in-ter-face *vt* (1962) 1: to connect by means of an interface (~ a machine with a computer) 2: to serve as an interface for ~ *vi* 1: to become interfaced 2: to interact or coordinate harmoniously
in-ter-fac-ing \-fā-sɪŋ\ *n* (1942) fabric sewn between the facing and the outside of a garment (as in a collar or cuff) for stiffening and stay retention
in-ter-faith \in-tər-'fāth\ *adj* (1932) involving persons of different religious faiths
in-ter-fere \in-tər-'fɪr\ *vi* -fered; -fer-ing [ME *enterferen*, fr. A *s'entreferir* to strike one another, fr. *entre-* + *ferir* to strike, fr. *ferire* — more at BORE] (15c) 1: to interfere in a way that hinders or impedes: come into collision or be in opposition 2: to strike one against the opposite foot or ankle in walking or running — used esp. of horses 3: to enter into or take a part in the concerns of others 4: to act reciprocally so as to augment, diminish, or otherwise affect one another — used of waves syn see INTERPOSE — **in-ter-fer-er** *n*
in-ter-fer-ence \in-tər-'fɪr-ən(t)\ *n* (1783) 1 a: the act or process of interfering b: something that interferes; OBSTRUCTION 2: the mutual effect on meeting of two wave trains (as of light or sound) that constitutes alternating areas of increased and decreased amplitude (as light and dark lines or louder and softer sound) 3 a: the legal blocking, an opponent in football to make way for the ballcarrier b: the illegal hindering of an opponent in sports 4: partial or complete inhibition or sometimes facilitation of other genetic crossovers in the vicinity of chromosomal locus where a preceding crossover has occurred 5: confusion of a received radio signal due to the presence of noise (as atmospheric) or signals from two or more transmitters on a single frequency b: something that produces such confusion 6: the disturbing effect of new learning on the performance of previously learned behavior with which it is inconsistent — **in-ter-fer-ence-less** \-fɪr-ən(t)\ *adj*
in-ter-fer-o-gram \in-tər-'fɪr-ə-'grām\ *n* (1921) a photograph record made by an apparatus for recording optical interference phenomena
in-ter-fer-om-e-ter \in-tər-'fɪr-ə-'mā-tər, -'fɪ-rā-\ *n* [ISV] (1897) apparatus that utilizes the interference of waves (as of light) for precise determinations (as of distance or wavelength) — **in-ter-fer-o-met-er** \-fɪr-ə-'me-trɪk\ *adj* — **in-ter-fer-o-met-er-cal-ly** \-trɪ-k(ə)-lɪ\ *adv*
in-ter-fer-om-e-try \-fɪ-rā-'mā-trē, -'fɪ-rā-\ *n*
in-ter-fer-on \in-tər-'fɪr-ən\ *n* [*interferere* + *-on*] (1957) any of group of heat-stable soluble basic antiviral glycoprotein cytokines low molecular weight that are produced by cells exposed to virus, the action of a virus, sometimes to the action of another intracellular parasite (as a bacterium), or experimentally to the action of some chemicals
interferon alpha *n* (1980) ALPHA INTERFERON
interferon beta *n* (1981) BETA INTERFERON
interferon gamma *n* (ca. 1982) GAMMA INTERFERON
in-ter-fer-tile \in-tər-'fɪr-tɪl\ *adj* (1899) capable of interbreeding
in-ter-fer-til-ity \-fɪr-tɪ-l-i-tē\ *n*
in-ter-file \in-tər-'fɪl\ *vt* (1950) to arrange in or add to a file: FILE
in-ter-flu-ve \in-tər-'flūv\ *n* [inter- + L *fluvius* river — more at FLUVI] (1895) the area between adjacent streams flowing in the same direction
in-ter-fuse \in-tər-'fyūz\ *vb* [L *interfusio*, pp. of *interfundere* to pour between, fr. *inter-* + *fundere* to pour — more at FOUND] *vt* (1593) to combine by fusing; BLEND 2: to add as if by fusing; INFUSE ~ *vi*: BLEND, FUSE — **in-ter-fu-sion** \-'fyū-zhən\ *n*
in-ter-ga-lac-tic \in-tər-'gə-'lāk-tɪk\ *adj* (1928) 1: situated in or relating to the spaces between galaxies 2: of, relating to, or occurring outer space (~ battles)
in-ter-gla-cial \-'glā-shəl\ *n* (1867) a warm period between glacial epochs — **interglacial** *adj*
in-ter-gov-ern-men-tal \-gə-vər(n)-'men-təl\ *adj* (1927) existing occurring between two or more governments or levels of government
in-ter-gra-da-tion \-grə-'dā-shən, -grə-\ *n* (1874) the condition of individual or population that intergrades — **in-ter-gra-da-tion** \-shən, -shən\ *adj*
in-ter-grade \in-tər-'grād\ *vi* (1874) to merge gradually one with another through a continuous series of intermediate forms
in-ter-grade \in-tər-'grād\ *n* (1888) an intermediate form
in-ter-grow \in-tər-'grəʊ\ *n* (1844) a growing between or together also: the product of such growth
in-ter-lm \in-tər-'lɪm\ *n* [L, adv., meanwhile, fr. *inter* between — more at INTER] (ca. 1580) an intervening time: INTERVAL
in-ter-lm *adj* (1604) done, made, appointed, or occurring for an interval
in-ter-ior \in-tər-'ɪər\ *adj* [MF & L; MF *interiore*, fr. L, compar. of **interius* inward, on the inside; akin to L *inter*] (15c) 1: lying, occurring, or functioning within the limiting boundaries: INNER (an